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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**FORTUNE GROWERS, LLC, a Nevada
limited liability company,**

Plaintiff,

vs.

**SOUTHERN CITRUS, INC., a California
corporation; HANA GIBO, an individual;
SABAH YOKHANNA, an individual;
and BROADWAY FARMERS MARKET,
INC., a California corporation,
Defendants.**

Case No.: 3:07-cv-2088

**PLAINTIFF'S MOTION FOR
SERVICE OF SABAH YOKHANNA
BY PUBLICATION**

21 Pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure and Cal. Code
22 Civ. Proc. §415.50, Plaintiff, Fortune Growers, LLC ("Fortune Growers"), by and
23 through its undersigned counsel, files its Motion for Service of Sabah Youkhanna by
24 Publication. In support of its Motion, Fortune Growers submits the Affidavit of Steven
25 M. De Falco ("De Falco Affidavit"), filed contemporaneously with this Motion, and
26 states the following:
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1 1. On November 14, 2007, Fortune Growers filed its First Amended
2 Complaint against Defendants, Southern Citrus, Inc., Hana Gibo, Sabah Youkhanna,
3 and Broadway Farmers Market, Inc. [Docket No. 17].

4 2. On December 2, 2007, Fortune Growers' Summonses and First Amended
5 Complaint were served upon Defendants, Southern Citrus, Inc., Hana Gibo, and
6 Broadway Farmers Market, Inc. [Docket Nos. 19, 20, and 21].

8 3. As detailed in De Falco Affidavit, Fortune Growers has attempted to
9 perfect service of the Summons and Complaint numerous times upon Sabah
10 Youkhanna, but has been unable to successfully effectuate personal or substituted
11 service.
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13 4. Fortune Growers requests that this Court allow service upon Sabah
14 Youkhanna with the Summons and Complaint by publication.
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16 MEMORANDUM OF LAW

17 Rule 4(e)(1) of the Federal Rules of Civil Procedure provides that service may be
18 effected pursuant to the law of the state in which the district court is located. Cal
19 Code Civ Proc § 415.50(a)(1) provides that,

20 (a) A summons may be served by publication if upon
21 affidavit it appears to the satisfaction of the court in which
22 the action is pending that the party to be served cannot with
23 reasonable diligence be served in another manner specified
24 in this article and that . . .

25 (1) A cause of action exists against the party upon whom
26 service is to be made or he or she is a necessary or proper
27 party to the action.
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As detailed in De Falco Affidavit, Fortune Growers has been unable to

1 successfully serve Sabah Youkhanna, despite several attempts by its process server.

2 Additionally, Sabah Youkhanna is a necessary and proper party to this action.
3 Pursuant to numerous federal courts' decisions and the federal common law,
4 individuals can be held personally liable for a buyer's breach of its fiduciary duty
5 under PACA if shareholders, officers, or directors of a produce corporation (1) were in
6 a position to control PACA trust assets and (2) did not preserve the corporation's
7 PACA Trust assets for the beneficiaries. Golman-Hayden Co. v. Fresh Source Produce,
8 Inc., 217 F.3d 348, 351 (5th Cir. 2000); Sunkist Growers, Inc. v. Fisher, 104 F. 3d 280, 283
9 (9th Cir. 1997). In this case, Sabah Youkhanna was a principal and an officer of
10 Southern Citrus, Inc., and thus, he was in a position to control the PACA trust assets of
11 Southern Citrus, Inc. See, ¶9, De Falco Affidavit.
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14 FOR THESE REASONS, Fortune Growers respectfully requests that that this
15 Honorable Court allow service upon Sabah Youkhanna by publication, along with
16 such other and further relief as this Court deems just in these premises.
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1 Respectfully submitted this 5th day of December, 2007.

2 **MEUERS LAW FIRM, P.L.**

3 By: s/Steven M. De Falco

4 Lawrence H. Meuers

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